

JOHN MALONE Et AL.

IBLA 84-630

Decided April 11, 1985

Appeal from a decision of the Anchorage, Alaska, District Office, Bureau of Land Management, declaring placer mining claims AA-53314 through AA-53328 null and void ab initio and rejecting claimants' recordation filings.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land --Withdrawals and Reservations: Effect of

A mining claim located on land withdrawn from mineral entry at the time of location is properly declared null and void ab initio. The "date of location" of a mining claim is determined by reference to the laws of the state in which the claim is located.

APPEARANCES: John F. Malone, for appellants.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

John F. Malone, Vicki D. Malone, Warren D. Hulbert, and Don G. Porter, claimants of 15 placer mining claims, AA-53314 through AA-53328, appeal from a May 7, 1984, decision of the Anchorage, Alaska, District Office, Bureau of Land Management (BLM). ^{1/} The claims were declared null and void ab initio and the recordation filings for all were rejected by BLM because the subject lands, situated in Tps. 8 and 9 S., R. 72 W., and T. 9 S., R. 73 W., Seward Meridian, Alaska, were withdrawn from mineral entry under Public Land Order Nos. (PLO's) 5179 and 5181 (37 FR 5579, 5584 (Mar. 16, 1972)) at the time the claims were located.

On January 6, 1984, claimants filed their notices of location for these claims with BLM pursuant to section 314(b) of Federal Land Policy and

^{1/} The mining claims are named as follows:

"AA-53314, Domingo #1; AA-53315, Domingo #2; AA-53316, Domingo #3; AA-53317, Domingo-Faro #4; AA-53318, Domingo-Faro #5; AA-53319, Domingo-Faro #6; AA-53320, Domingo-Faro #7; AA-53321, Domingo #8; AA-53322, Domingo #9; AA-53323, Domingo-Faro #10; AA-53324, Domingo-Faro #11; AA-53325, Domingo-Faro #12; AA-53326, Domingo-Faro #13; AA-53327, Domingo-Faro #14; and AA-53328, Domingo-Faro #15."

Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982). According to the respective notices, discovery was made for claims AA-53314 through AA-53324 between October 5 and 11, 1983, and the notices of location were posted to each claim on October 16, 1983. Discovery for claims AA-53325 through AA-53328, according to the notices, was made for each claim on October 16, 1983, and the respective notices were posted on October 22, 1983. The notices reflect that the claims were recorded with the local recording district on December 29, 1983.

In their statement of reasons, appellants contend that the proper date of location for each claim is January 6, 1984, the date when they assertedly completed all requirements for a valid location on Federal lands by filing their location certificates with BLM. They argue that as of that date all previous withdrawals for the lands in question had been rescinded or had expired and, therefore, the lands were open to mineral entry. Their assertion is primarily based on an argument that the PLO's referred to by BLM in its decision were of no effect when they located their claims because the implied authority of the executive to issue withdrawal orders as cited in the PLO's had been expressly rescinded by Congress in 1976 under section 704(a) of FLPMA, 90 Stat. 2792. Further, appellants argue that to the extent the withdrawals issued pursuant to section 17(d) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1616(d), they were superseded by section 1203 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 3183 (1982). Appellants assert that after the ANILCA withdrawal expired on December 3, 1983, the lands in question were not segregated under any authority and became available for mineral entry and location.

BLM's decision regarding appellants' claims was based on the posting of PLO's 5179 and 5181 to the master title plats for the subject lands and the segregative effect of such withdrawal orders. These PLO's were issued March 9, 1972, pursuant to the authority under Exec. Order No. 10355, 17 FR 4831 (May 28, 1952), and section 17(d)(1), (2)(A) of ANCSA, 43 U.S.C. § 1616(d)(1), (2)(A) (1982), and withdrew the three townships the claims are situated in, among others, from location and entry under the mining laws. ^{2/} The withdrawal authority delegated by Congress in Subsection 17(d)(2)(A), cited in PLO 5179, limited the duration of any withdrawal issued pursuant to this authority to not more than 2 years if the land was not dedicated to one of the enumerated land uses. 43 U.S.C. § 1616(d)(2)(C) (1982). The record does not reflect that the lands affected by this withdrawal and at issue here were classified for such use. However, only one claim, AA-53320, was affected by this order. See note 2 infra. Since all the lands are encompassed within PLO 5181, we will focus our discussion on its segregative effect. Under Subsection 17(d)(1), the ANCSA authority referred to in PLO 5181, all unreserved public land in Alaska was withdrawn for a period of 90 days after December 18, 1971. Further withdrawal beyond this period required affirmative action by the Secretary under his existing authority. 43 U.S.C.

^{2/} Among the public lands identified here, PLO 5179 withdrew only those lands within T. 9 S., R. 72 W., Seward Meridian. PLO 5181 withdrew the lands within all three of the described townships. While AA-53320, Domingo-Faro #7, is the only claim conflicting with PLO 5179, all 15 claims conflict with PLO 5181.

§ 1616(d)(1) (1982). Therefore, we must look at the Secretary's authority to create a withdrawal in order to determine the duration of the withdrawal ordered by PLO 5181.

Prior to enactment of FLPMA, executive withdrawals of public lands issued without congressional direction were accomplished under implied authority, United States v. Midwest Oil Co., 236 U.S. 459 (1915), or authority granted by the Pickett Act of 1910, 36 Stat. 847 (previously codified at 43 U.S.C. § 141 (1970)). Cf., Pan Alaska Fisheries, Inc., 74 IBLA 295, 306 (1983). Exec. Order No. 10355 was a delegation of the withdrawal authority to the Secretary. 17 FR 4831 (May 28, 1952); 43 U.S.C. § 141 note (1970). As noted by appellants, the implied authority was revoked by section 704(a) of FLPMA, supra. The Pickett Act authority was also revoked by the same provision. However, contrary to appellants' argument, Congress provided in section 701(c) of FLPMA, 90 Stat. 2786, a savings clause for existing withdrawals previously issued under such revoked authority as follows: "All withdrawals, reservations, classifications, and designations in effect as of the date of approval of this Act [FLPMA] shall remain in full force and effect until modified under the provisions of this Act or other applicable law." 43 U.S.C. § 1701 note (1982). Since the record reflects that no express administrative action has modified or rescinded the withdrawal order in PLO 5181, it remains effective and binding unless invalidated by subsequent congressional action.

Appellants argue that in section 1203 of ANILCA, 16 U.S.C. § 3183 (1982) Congress enacted its own superseding withdrawal for lands within the boundaries identified for that provision including the lands embraced by appellants' claims. Available records and maps indicate the claims here in question are probably within the Bristol Bay Cooperative Region as defined in Subsection (a)(2) of section 1203, 16 U.S.C. § 3183(a)(2) (1982). The Bristol Bay Cooperative Region was established to "provide for the preparation and implementation of a comprehensive and systematic cooperative management plan" to conserve natural and cultural resources, to provide for orderly and rational development of economic resources, to provide for appropriate land exchanges or state selections, and to identify lands suitable for inclusion with units of the national conservation system. 16 U.S.C. § 3183(b) (1982). Subsection (f) provides for withdrawal of all Federal lands within the region for a 3-year period (from December 2, 1980) and management by BLM consistent with the provisions of the statute. 16 U.S.C. § 1393(f) (1982). The withdrawal order under PLO 5181 was designed to preserve the lands for possible addition to the national wildlife refuge system. This purpose does not appear to conflict with section 1203. See also 1980 U.S. Code Cong. & Ad. News 5170, 5196-5199. Appellants have presented no showing of authority for assuming a congressional intent to revoke the prior withdrawal.

Contrary to appellants' arguments, a conclusion that the congressional withdrawal under section 1203(f) of ANILCA rescinded the withdrawal order of PLO 5181 does not govern the disposition of this appeal because they have incorrectly identified the dates they located their claims. The "date of location" of a mining claim on public land is determined by reference to the laws of the state in which the claim is located. 43 CFR 3833.0-5(h); Ray L. Virg-in, 84 IBLA 347 (1984). Under Alaska law, a claim is located by marking the boundary of the claim and posting (attaching) on one of the posts

or monuments designating such boundary a sign or notice containing the name of the claim, the name of the locator(s), the date of location, and the dimensions of the claim. Alaska Stat. §§ 27.10.010, 27.10.040 (1962). The locator of a placer claim is required to record the claim within 90 days after posting the notice of location on the claim by filing with the recorder of the recording district in which the claim is located a "certificate of location" which contains, among other things, the date of discovery and of posting the notice of location. Alaska Stat. § 27.10.050 (1962). The appropriate date of location under the applicable state law in Alaska is the date when the boundary of the claim has been established and a notice of location posted thereto. *E.g.*, Ray L. Virg-in, *supra*; Thomas Stoelting, 70 IBLA 231 (1983). It is not the date, as asserted by appellants, when the claim is recorded with the local recorder or filed with BLM. These latter dates relate to acts necessary to perfect the location rather than the actual location date. We conclude that under an application of the appropriate laws and regulations the "date(s) of location" for appellants' mining claims, as stated in the notices of location, are October 16 and 22, 1983. The record shows and appellants acknowledge that the lands their claims are located upon were withdrawn from mineral entry at that time by the segregative effect of either section 1203(f) of ANILCA or PLO 5181, or both.

It is well established that a mining claim wholly located on land withdrawn at the time of location confers no rights on the locator and is properly declared null and void ab initio. John Elmore, 84 IBLA 163 (1984); Evan Hansen, 83 IBLA 260 (1984); Homer Owens, 81 IBLA 402, 403 (1984), and cases cited therein. Under the circumstance in this case, BLM properly rejected appellants' recordation filings and declared their claims, AA-53314 through AA-53328, null and void ab initio.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge.

